



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

October 13, 2003

Ms. Bettye Lynn
Lynn Pham Moore & Ross, P.C.
1320 South university Drive, Suite 720
Fort Worth, Texas 76107

OR2003-7265

Dear Ms. Lynn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189211.

The City of Paris (the "city"), which you represent, received a request for records of (1) all incidents within the last ten years involving damage to fire department or EMS vehicles, and (2) disciplinary actions taken as a result of these incidents. You state that you have not located any information responsive to the request. However, you have submitted information that appears to be responsive. To the extent any additional information responsive to the request exists, it must be released to the requestor. *See* Gov't Code §§ 552.301, .302. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

We note at the outset that you indicate that the submitted documents are maintained by the city's Civil Service Commission pursuant to section 143.089(a) of the Local Government Code. Section 143.089(e) grants a right of access to a firefighter or police officer to "any letter, memorandum, or document placed in the person's personnel file." *See* Local Gov't Code § 143.089(e). This office has interpreted this provision to grant a firefighter or a police officer an affirmative right of access to the information in his or her personnel file maintained under section 143.089(a). *See* Open Records Decision No. 650 at 3 (1996) (the

¹ Although you initially raise sections 552.101, 552.102, 552.107, 552.108, 552.117, 552.119, and 552.130 as exceptions to disclosure, you have not submitted written arguments explaining how these exceptions apply to the submitted information. We therefore presume you have waived your arguments under these sections. *See* Gov't Code 552.301, .302.

confidentiality provision of section 143.089(g) contains no exceptions); *see also Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Here, the information is maintained in the file under section 143.089(a) and the requestor is the firefighter whose information is at issue. Therefore, you must release the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

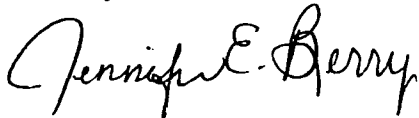
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Jennifer E. Berry". The signature is written in dark ink and is positioned above the printed name and title.

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 189211

Enc: Submitted documents

c: Mr. Kevin Hughes
3230 E. Houston
Paris, Texas 75460
(w/o enclosures)